

Message Text

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ORIGIN STR-04

INFO OCT-01 EUR-12 EA-07 IO-13 ISO-00 COME-00 TRSE-00
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TO USMISSION GENEVA IMMEDIATE
INFO USMISSION EC BRUSSELS PRIORITY
AMEMBASSY TOKYO

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E.O. 11652:

TAGS:ETRD, GATT

SUBJECT: PROPOSED WORKING PARTY ON ZENITH CASE

REF: (A) GENEVA 3589; (B) STATE 107746; (C) GENEVA 03825

1. CONCERNING THE JAPANESE PROPOSAL FOR THE ESTABLISHMENT
OF A GATT WORKING PARTY TO DISCUSS THE ZENITH CASE, THE
U.S. POSITION IS OUTLINED BELOW.

2. WE UNDERSTAND THE CONCERN OF OUR TRADING PARTNERS
WITH REGARD TO THE RECENT DECISION IN THE U.S. CUSTOMS
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COURT IN THE ZENITH CASE. AS WE HAVE PREVIOUSLY STATED,
THE UNITED STATES RECOGNIZES ITS OBLIGATIONS UNDER THE
GATT WITH REGARD TO BORDER TAX ADJUSTMENTS ON GOODS
TRADED INTERNATIONALLY AND WILL DO EVERYTHING POSSIBLE
TO UPHOLD ITS OBLIGATIONS. IN THIS REGARD, WE ARE
VIGOROUSLY PURSUING A REVERSAL OF THE CUSTOMS COURT
DECISION IN THE HIGHER COURTS.

3. WE ARE NOT OPPOSED TO THE ESTABLISHMENT OF A GATT WORKING PARTY TO DISCUSS THE ZENITH CASE. INDEED, WE ARE WILLING TO FULLY PARTICIPATE IN SUCH A WORKING PARTY.

4. WE BELIEVE THE TERMS OF REFERENCE FOR THE PROPOSED WP SHOULD BE THE FOLLOWING: OPEN QUOTE TO CONSIDER THE DECISION BY THE U.S. CUSTOMS COURT IN ZENITH RADIO CORP. VS. UNITED STATES IN THE LIGHT OF GATT ARTICLE VI, PARAGRAPH 4 AND THE SUPPLEMENTARY NOTE TO ARTICLE XVI SHOULD THAT DECISION BECOME FINAL END QUOTE. IF THESE TERMS OF REFERENCE ARE ACCEPTABLE, WE CAN AGREE TO AN INITIAL MEETING OF THE WP AT AN EARLY DATE. (REF. C).

5. MISSION IS REQUESTED TO SEEK AGREEMENT OF JAPAN, AND AS APPROPRIATE OTHER DELEGATIONS, TO THE ABOVE TERMS OF REFERENCE PRIOR TO UPCOMING GATT COUNCIL MEETING. MISSION SHOULD STRESS THAT TERMS OF REFERENCE PROPOSED IN PARA. 4 ARE APPROPRIATE IN THIS CASE AS THEY STATE ISSUE IN NEUTRAL TERMS. THE PROPOSED TERMS OF REFERENCE DO NOT PRECLUDE A RAPID REPORT TO THE COUNCIL. IF THE JAPANESE QUESTION THE PHRASE OPEN QUOTE SHOULD THAT DECISION

BECOME FINAL END QUOTE WE CAN AGREE TO ITS DELETION. HOWEVER, WE WOULD OPPOSE ANY CHARGES THAT SUSPENSION OF LIQUIDATION PER SE IS A VIOLATION OF THE GATT. MISSION SHOULD POINT OUT TO JAPANESE THAT DISCUSSION OF SUSPENSION OF LIQUIDATION ISSUE, AS OPPOSED TO THE SUBSTANCE OF LIMITED OFFICIAL USE

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THE COURT DECISION, WOULD DELAY AGREEMENT ON WP REPORT.

6. IF ABOVE TERMS OF REFERENCE ARE NOT ACCEPTABLE, MISSION SHOULD REPORT BACK TO WASHINGTON ASAP FOR FURTHER INSTRUCTIONS. CHRISTOPHER

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